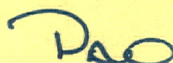


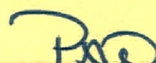
March 9, 2000

IN RE: DOCKET NO. 1999-469-C – BELLSOUTH – GUIDELINES FOR
ALTERNATIVE REGULATION.


Rebuttal
COPY OF ~~DIRECT~~ TESTIMONY OF ALPHONSO J. VARNER FILED ON
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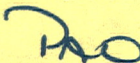
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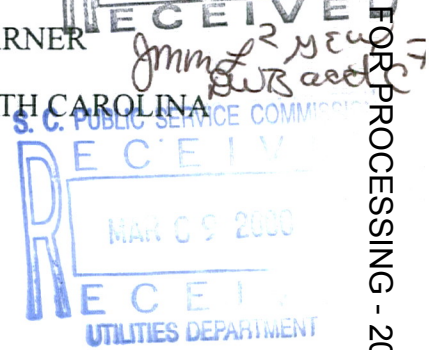
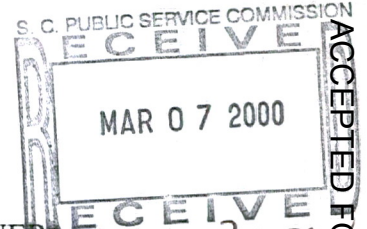
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BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF ALPHONSO J. VARNER

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 1999-469-C

MARCH 7, 2000

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR
BUSINESS ADDRESS.

A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior
Director for State Regulatory for the nine-state BellSouth region. My business
address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

A. Yes. I filed direct testimony and one exhibit on February 15, 2000.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to the testimonies of other
parties filed on February 29, 2000.

Q. DO YOU HAVE ANY COMMENTS REGARDING THE TESTIMONY OF
MR. GREGORY TATE ON BEHALF OF AT&T?

RETURN DATE: 02 DBW
SERVICE: 02 DBW

1

2 A. Yes. First, nothing in Mr. Tate's testimony is responsive to the issues in this
3 proceeding. This proceeding is designed to establish guidelines in accordance
4 with the requirements of S.C. Code Section 58-9-576(B)(5). Mr. Tate's entire
5 testimony involves the current prices for switched access in South Carolina.
6 All existing prices in effect on the date BellSouth notified the Commission of
7 its election of price regulation (July 14, 1999), including switched access
8 prices, are considered just and reasonable. Mr. Tate has not identified any
9 changes that occurred since July 1999 that would cause those rates to be
10 unreasonable. Because Mr. Tate's testimony is not responsive to the issues in
11 this proceeding, BellSouth has filed a Motion to Strike his testimony.

12

13 Second, any complaint regarding the validity of prices is irrelevant to the issue
14 of establishing guidelines. Mr. Tate, at best, has the cart before the horse. The
15 guidelines must be established before he can claim that they are being violated.

16

17 Q. DO YOU HAVE ANY COMMENTS REGARDING THE TESTIMONY OF
18 MCI's WITNESS MR. GREG DARNELL?

19

20 A. Yes. I have several comments rebutting the testimony of Mr. Darnell as
21 described below.

22

23 Q. MR. DARNELL STATES THAT "THERE IS FUNCTIONALLY LITTLE IF
24 ANY COMPETITION IN THE LOCAL EXCHANGE MARKET IN SOUTH
25 CAROLINA" AND BELL SOUTH "HAS LITTLE IF ANY INCENTIVE TO

1 OPEN ITS MARKET.” DO YOU AGREE?

2

3 A. No. Contrary to Mr. Darnell’s belief, there is competition in South Carolina
4 and that competition is increasing rapidly on a daily basis. This is due to the
5 pro-competitive policies of this Commission and also due to BellSouth’s
6 opening the local exchange market in South Carolina to all competitors on a
7 nondiscriminatory basis. This Commission has issued over 100 certificates to
8 competitive local exchange carriers (“CLECs”) to operate as local carriers in
9 South Carolina and over 50 CLECs have filed tariffs in South Carolina. The
10 growth of local service alternatives is on a steady rise as the following 1999
11 over 1998 statistics attest:

- 12 • 587% increase in provision of unbundled loops
- 13 • 146% increase in local interconnection trunks
- 14 • 1088% increase in ported numbers
- 15 • 576% increase in collocation arrangements

16 As the numbers demonstrate, customers in South Carolina not only have local
17 service alternatives, they are indeed subscribing to these services.

18

19 Mr. Darnell is also incorrect in his assertion that BellSouth has little if any
20 incentive to open its local markets. To the contrary, the Telecommunications
21 Act of 1996 (the “Act”) mandates that BellSouth open its local markets
22 through interconnection, unbundled network elements and resale of its retail
23 telecommunications services. BellSouth has done so. BellSouth also complies
24 with the orders of the Federal Communications Commission (“FCC”) and this
25 Commission. In addition, BellSouth is determined to enter the interLATA

1 services market in South Carolina. In order to do so, BellSouth must
2 demonstrate that it has opened its local markets and that it meets the
3 requirements of the competitive checklist contained in the Telecommunications
4 Act of 1996 (the "Act"). BellSouth needs no better incentive to open its
5 markets.

6
7 Q. PLEASE COMMENT ON MR. DARNELL'S PURPORTED ATTEMPT TO
8 "GIVE EFFECT TO THE LEGISLATIVE PURPOSE OF SECTION 576".

9
10 A. Mr. Darnell attempts to address constitutional principles, statutory law and
11 legislative intent over approximately eight pages of his testimony. It is not
12 clear what he is proposing through his testimony. It appears that he is
13 attempting to make some point about the relevance of existing law prior to the
14 General Assembly passing Section 58-9-576, but the point is never really made
15 clear. I am particularly intrigued by his suggestion that the General Assembly
16 presupposed "that rates would have been long subject to some review, or that a
17 lawful alternative regulation plan had been in effect, before the election of
18 alternative regulation is made." Had that been a concern of the General
19 Assembly, it could easily have remedied the situation by adopting language
20 addressing such a situation in Section 58-9-576. The General Assembly took
21 no such action.

22
23 Indeed, the statute governing BellSouth's election of price regulation is clear.
24 Each clause under the statute is plain and there are no grounds for Mr.
25 Darnell's interpretations. Because the statute is clear, legislative intent is

1 clearly reflected by the plain language. Mr. Darnell's exercise in divining
2 legislative intent is merely an attempt to change the meaning of the statute by
3 claiming ambiguity where none exists. Therefore, Mr. Darnell's dissertation on
4 legislative intent is unnecessary and should be dismissed as irrelevant.

5
6 Q. HAS BELLSOUTH ATTEMPTED TO LIMIT THE REGULATORY
7 AUTHORITY OF THE COMMISSION AS MR. DARNELL SUGGESTS?

8
9 A. No. In its proposed guidelines, BellSouth has merely attempted to put
10 substance to the statute and the Commission's requirement that BellSouth draft
11 proposed guidelines as specified under Section 58-9-576(B)(5). BellSouth
12 believes it is useful for all parties to have the same understanding of how the
13 terms of that section of the statute will apply. Mr. Darnell seems to imply that
14 BellSouth is attempting to undermine the Commission's authority. This is
15 simply not the case. Again, the statute is clear and the flexibility provided
16 BellSouth and other LECs by the statute and the Commission's authority to
17 establish guidelines are clear. There is no attempt to undermine the
18 Commission's authority.

19
20 Q. MR. DARNELL ACCUSES BELLSOUTH OF REWORDING SECTION 58-
21 9-576(B)(4) OF THE STATUTE. PLEASE RESPOND.

22
23 A. It is actually Mr. Darnell that is rewording the statute by ignoring its plain
24 language and interpreting Section 58-9-576(B)(4) such that, after expiration of
25 the cap period on Basic Services, the Commission, and not BellSouth, may

1 adjust BellSouth's prices based on an inflation-based index. Mr. Darnell
 2 totally misses the point of price regulation. The intent of price regulation is to
 3 establish the limits under which a LEC may adjust its own prices in order to
 4 meet market conditions. In this instance, the limitation on a LEC's pricing
 5 flexibility for Basic Services is that increases are subject to an inflation-based
 6 index. The Commission will set the index and BellSouth may make price
 7 changes so long as those changes are within the limits allowed by the index. In
 8 this manner, a LEC is granted some flexibility to move its prices to meet
 9 market conditions.

10
 11 Q. IS MR. DARNELL'S REFERENCE AT PAGE 13 TO BELL SOUTH'S
 12 PROFITS APPROPRIATE IN THIS PROCEEDING?

13
 14 A. No. By referring to BellSouth's profits, MCI is again attempting to litigate the
 15 issues in the recent earnings case. MCI is apparently attempting to improperly
 16 overlay rate-of-return regulation on the price regulation plan outlined in
 17 Section 58-9-576. Section 58-9-576(B)(2) states as follows:

18 *On the date a LEC notifies the commission of its intent to elect the plan*
 19 *described in this section, existing rates, terms, and conditions for the*
 20 *services provided by the electing LEC contained in the then-existing*
 21 *tariffs and contracts are considered just and reasonable.*

22
 23 The statute contains no provision for a review of the existing rates at the time
 24 of the election, nor does the statute contemplate an earnings review at the time
 25 of election. Therefore, MCI's efforts to re-litigate the earnings case in this

1 proceeding is improper.

2

3 Q. MR. DARNELL SUGGESTS THE COMMISSION ADOPT HIS
4 GUIDELINES FOR BELL SOUTH, WHICH HE STATES ARE MODELED
5 AFTER THE SPRINT/UNITED GUIDELINES. DO YOU AGREE?

6

7 A. No. The guidelines proposed by Mr. Darnell are less definitive and less
8 specific than those proposed by BellSouth. BellSouth's proposed guidelines
9 provide definitive direction for a party to determine whether or not a proposed
10 tariff meets the requirements of the statute. The Commission must act in the
11 public interest as determined by the statute. Thus, a separate requirement to do
12 so is superfluous in the guidelines. What is useful is the additional procedural
13 direction that BellSouth's proposed guidelines provide.

14

15 Further, BellSouth has included an additional limitation on pricing flexibility
16 that exceeds the requirements of the statute. BellSouth has placed a voluntary
17 cap of 5% on the aggregate amount of annual increases it will make in the
18 Other Services category. This voluntary limitation is supported by the Staff's
19 witness, Mr. Gary Walsh, as evidenced on page 3 of his testimony. Further, at
20 page 7 of his testimony, Mr. Buckalew, representing the Department of
21 Consumer Affairs, also recognizes that BellSouth has voluntarily established
22 this price limitation and finds the guidelines to be appropriate. Therefore,
23 BellSouth believes it is unnecessary and inappropriate to adopt Mr. Darnell's
24 proposed guidelines.

25

1 Q. ALTHOUGH MR. BUCKALEW AGREES THAT BELL SOUTH'S
2 GUIDELINES ARE APPROPRIATE, HE RECOMMENDS THAT
3 INCREASES BE POSTPONED FOR EXISTING CUSTOMERS FOR 90
4 DAYS. DO YOU AGREE?

5
6 A. No. Section 58-9-576(B)(6) states that tariffs shall be presumed valid and
7 become effective seven days after filing for price decreases and fourteen days
8 after filing for price increases and new services. Mr. Buckalew makes no
9 attempt to reconcile his recommendation with the language of the statute. The
10 statute does not provide the Commission with the flexibility to extend the
11 effective date of such tariffs. The statute recognizes that, as incumbent LECs
12 are exposed to greater levels of competition for their products and services,
13 they should be allowed the flexibility to respond more rapidly to changing
14 market conditions. Therefore, the effective date for tariff changes and new
15 services should follow explicitly the language of the statute.

16
17 Similarly, Mr. Russell, on behalf of TriVergent Communications, suggests that
18 presumptive validity for tariff filings "does not automatically equate with
19 effectiveness." Mr. Russell is incorrect. The statute clearly states that tariffs
20 shall be presumed valid and become effective in the time periods specified in
21 the statute.

22
23 If the concern of these parties is that customers may be billed for services that
24 are challenged and ultimately revised based upon a complaint, BellSouth's
25 proposed guidelines ensure that such a situation will not occur. Article IV.12

1 of BellSouth's proposed guidelines states:

2 *Should the Commission determine after investigation that a tariff filing*
 3 *is disapproved, the Commission shall have authority to require*
 4 *adjustments to customer bills for any applicable price differential.*
 5 *Said adjustment shall be authorized from the date the tariff became*
 6 *effective through the date of its disapproval.*

7

8 Q. PLEASE COMMENT ON MR. WALSH'S PROPOSAL TO USE THE
 9 COMMISSION'S EXISTING COMPLAINT PROCEDURES TO HANDLE
 10 COMPLAINTS UNDER SECTION 58-9-576(B)(5).

11

12 A. BellSouth set forth the complaint procedures in Article IV of its proposed
 13 guidelines in order to assist the Commission by limiting complaints to those
 14 with a valid basis under Section 58-9-576(B)(5). BellSouth understands that
 15 the Commission has limited resources and BellSouth intended that its proposed
 16 procedures enhance, not replace, the Commission's existing complaint process.
 17 The Commission's current complaint procedures deal with any type of
 18 complaint. BellSouth has outlined a process that it believes deals more
 19 definitively with the issues pertaining to price regulation and provides for the
 20 speedy resolution of a complaint involving services under the Other Services
 21 category.

22

23 Q. MR. WALSH RECOMMENDS BELL SOUTH'S PRICES, OTHER THAN
 24 BASIC SERVICE PRICES, BE EQUAL TO OR ABOVE BELL SOUTH'S
 25 LONG RUN INCREMENTAL COST, WHILE MR. BUCKALEW

1 RECOMMENDS THAT SUCH PRICES BE SET ABOVE BELL SOUTH'S
2 INCREMENTAL COSTS. PLEASE COMMENT.

3

4 A. Based on the testimony of these parties, BellSouth agrees that it will not price
5 services in the Other Services category below its long run incremental cost to
6 provide the service, subject to the following exception. On a case by case
7 basis, BellSouth may, in good faith, price services to meet the equally low
8 price of a competitor.

9

10 Q. MR. DARNELL SUGGESTS A FAR MORE EXPANSIVE TEST FOR
11 DETERMINING THE LEGALITY OF THE PRICING OF OTHER
12 SERVICES. PLEASE COMMENT.

13

14 A. At page 13 of his testimony, Mr. Darnell suggests that a complaint "could be as
15 simple as a customer contending that BellSouth is charging its customers more
16 than would be permitted by a competitive marketplace and as such BellSouth
17 must be abusing its Market Position." First, the market for all services affected
18 by the price regulation plan are open to competition. So a claim that prices
19 exceed those allowed by a competitive marketplace is unsupportable. The
20 result of his analysis is that, if BellSouth has prices that can be undercut by a
21 competitor, then BellSouth is abusing its market position. That conclusion is
22 illogical.

23

24 Second, Mr. Darnell's standard for a complaint would subject BellSouth and
25 this Commission to an unnecessary level of complaints not mandated by the

1 statute. His standard would subject every pricing decision to challenge when
 2 the price of even a single competitor was found to be less than BellSouth's
 3 price. In fact, Mr. Darnell's comments suggest that when BellSouth prices a
 4 service above what a hypothetical competitor might charge, BellSouth's prices
 5 could be challenged on that ground alone. Such a standard would impose an
 6 unworkable morass of regulation and goes far beyond what the statute calls for.
 7 Mr. Darnell's suggestion should be dismissed.

8
 9 Q. IS IT NECESSARY TO INCLUDE UNDER ARTICLE III OF THE
 10 GUIDELINES THE PARAGRAPH SUGGESTED BY THE SOUTH
 11 CAROLINA PUBLIC COMMUNICATIONS ASSOCIATES' WITNESS MR.
 12 WALTER RICE?

13
 14 A. No. The paragraph suggested for inclusion by Mr. Rice is unnecessary. First,
 15 Section 58-9-576 does not contain any exclusion for Public Telephone Access
 16 Service ("PTAS") from the requirements of that section. Therefore, PTAS is
 17 appropriately subject to the statute and is also subject to guidelines to be
 18 adopted under Section 58-9-576(B)(5). Second, PTAS prices are subject to
 19 any applicable FCC requirements. The proposed guidelines do not modify the
 20 FCC's requirements.

21
 22 Q. PLEASE COMMENT ON TRIVERGENT'S POSITION THAT THE
 23 LEGISLATIVE FINDING THAT EXISTING RATES ARE JUST AND
 24 REASONABLE DOES NOT CONSTITUTE A FINDING THAT SUCH
 25 RATES DO NOT CONSTITUTE AN ABUSE OF MARKET POSITION.

1

2 A. TriVergent's position is illogical and assumes that the General Assembly
3 reached a nonsensical conclusion. If the General Assembly believed that
4 existing rates were allowing an abuse of market position, it clearly would have
5 required such abuse to be corrected. A finding that the rates are just and
6 reasonable directly contradicts any possible finding that the rates represent an
7 abuse of market position. TriVergent is suggesting that the General Assembly
8 made two mutually exclusive findings in the same statute, which is simply not
9 the case.

10

11 Q. PLEASE COMMENT ON TRIVERGENT'S CLAIM THAT THE
12 COMMISSION COULD NEVER ADDRESS EXISTING RATES EVEN
13 THOUGH CIRCUMSTANCES CHANGE.

14

15 A. TriVergent's claim is incorrect. The General Assembly clearly stated that
16 existing rates were just and reasonable upon BellSouth's election of price
17 regulation. Consequently, there is no basis for reviewing existing rates at the
18 time of election of price regulation. This does not mean that a specific rate is
19 forever insulated from review. It simply means a party must demonstrate that a
20 specific rate that was just and reasonable is no longer just and reasonable. It
21 does not permit a general review of rates.

22

23 For Other Services it appears that the only circumstance that could
24 theoretically affect the viability of an existing rate under the statute would
25 occur if the costs of providing that service changed significantly and BellSouth

1 did not change the rate. Of course, if the rate changed, the new rates would be
2 subject to the guidelines. If the rate did not change and costs declined,
3 competition would force adjustments in the rate and there would be no need for
4 the Commission to address the existing rate.

5
6 Thus, the only situation where TriVergent's concerns could theoretically apply
7 would be where costs increased. Such costs would have to increase to the level
8 where they exceeded the existing rate and BellSouth did not increase the
9 existing rate. Such action would be illogical by BellSouth. However, we do
10 not believe that a party is precluded from filing a complaint alleging this
11 action.

12
13 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY.

14
15 A. Yes.

16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused the Rebuttal Testimony of Alphonso J. Varner to be served by via hand delivery such in the care and custody of the United States Postal Service with first-class postage affixed thereto and addressed to the following: this March 7, 2000:

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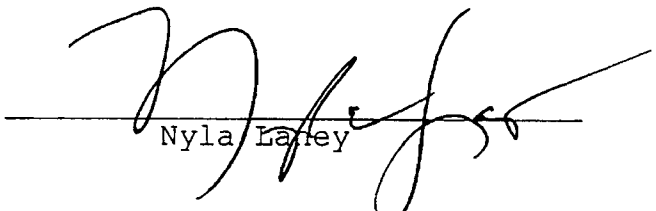
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